

and when you must submit it. You must, within the specified time period, provide additional information or request that the OTS suspend processing of the notice. If you fail to act within the specified time period, the OTS may treat the notice as withdrawn or may review the application based on the information provided.

§ 563.580 What standards and procedures will govern OTS review of the substance of my notice?

The OTS will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the OTS finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings association or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. If the OTS disapproves a notice, it will issue a written notice that explains why the OTS disapproved the notice. The OTS will send the notice to the savings association or savings and loan holding company and the individual.

§ 563.585 When may a proposed director or senior executive officer begin service?

(a) A proposed director or senior executive officer may begin service 30 days after the date the OTS receives all required information, unless:

(1) The OTS notifies you that it has disapproved the notice; or

(2) The OTS extends the 30-day period for an additional period not to exceed 60 days. If the OTS extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension. The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OTS notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after the OTS notifies you, in writing, of its intention not to disapprove the notice.

§ 563.590 When will the OTS waive the prior notice requirement?

(a) *Waiver request.* (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if the OTS issues a written finding that:

(i) Delay would threaten the safety or soundness of the savings association;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OTS grants a waiver, you must file a notice under this subpart within the time period specified by the OTS.

(b) *Automatic waiver.* An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) *Subsequent OTS action.* The OTS may disapprove a notice within 30 days after the OTS issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

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§ 563b.1 Scope of part.

(a) *General.* Except as the Office may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual savings associations to capital stock associations, and no mutual savings association shall convert to the capital stock form without the prior written consent of the Office. The Office may grant a waiver in writing from any requirement of this part for good cause shown.

(b) *Provisions of prescribed forms.* Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part except as it relates to information not deemed material.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a

written request for waiver of compliance with such provision by the Office. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders or other savings associations or be contrary to the public interest.

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) *Acting in concert.* The term “acting in concert” shall be defined as provided in § 574.2(c).

(2) *Affiliate.* An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) *Amount.* The term “amount”, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(4) *Applicant.* An “applicant” is a savings association which has applied to convert pursuant to this part.

(5) *Associate.* The term “associate”, when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,

(ii) Any trust or other estate in which such person has a substantial

beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that, for the purposes of § 563b.3 (c)(6), (c)(7), (c)(9), and (d)(4), it does not include any tax-qualified employee stock benefit plan or non-tax-qualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of § 563b.3(c)(8), it does not include any tax-qualified employee stock benefit plan, and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or subsidiaries.

(6) *Association members.* The term “association members” refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant’s meeting at which conversion will be voted upon.

(7) *BIF.* The term “BIF” means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(8) *Broker.* The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others.

(9) *Capital stock.* The term “capital stock” includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(10) *Charter.* The term “charter” includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(11) *Control.* The term “control” (including the terms “controlling”, “controlled by”, and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(12) *Dealer.* The term “dealer” means any person who engages either for all

or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) *Director.* The term “director” means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(14) *Eligibility record date.* The term “eligibility record date” means the record date for determining eligible account holders of a converting association.

(15) *Eligible account holder.* The term *eligible account holder* means any person holding a qualifying deposit as determined in accordance with § 563b.3(e) of this part, but shall include only those account holders with savings accounts in place for a minimum of one year prior to board of director adoption of the plan of conversion.

(16) *Employee.* The term *employee* does not include a director or officer.

(17) *Equity security.* The term “equity security” means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(18) *FDIC.* The term “FDIC” means the Federal Deposit Insurance Corporation, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(19) *Local community.* The term *local community* includes all counties in which the converting association has its home office or a branch office, all zip code areas corresponding to the converting association’s delineated Community Reinvestment Act service area, each county’s metropolitan statistical area and/or such other area or category as delineated by the savings association and provided for in the plan of conversion, as approved by the OTS.

(20) *Market Maker.* The term “market maker” means a dealer who, with respect to a particular security:

(i) Regularly publishes *bona fide*, competitive bid and offer quotations in

a recognized inter-dealer quotation system; or

(ii) Furnishes *bona fide* competitive bid and offer quotations on request; and

(iii) Is ready, willing and able to effect transactions in reasonable quantities at his or her quoted prices with other brokers or dealers.

(21) *Material*. The term “material”, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(22) *Member*. The term “member” means any person qualifying as a member of a savings association pursuant to its charter or bylaws.

(23) *Offer*. The term “offer”, “offer to sell”, or “offer of sale” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(24) *Office*. The term “Office” means the Office of Thrift Supervision.

(25) *Officer*. The term “officer” means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(26) *Person*. The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(27) *Proxy*. The term “proxy” includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his or her voting rights in the affairs of a savings asso-

ciation. Such an authorization may take the form of failure to dissent or object.

(28) *Purchase*. The terms “purchase” and “buy” include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(29) *Regional Director*. The term *regional director* means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the region in which the converting savings association has its principal office.

(30) *SAIF*. The term “SAIF” means the Savings Association Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

(31) *Sale*. The terms “sale” and “sell” include every contract to sell or otherwise dispose of a security or interest in a security for value; but such terms do not include an exchange of securities in connection with a merger or acquisition approved by the Office.

(32) *Savings account*. The term “savings account” has the same meaning as in part 561 of this chapter and includes certificates of deposit.

(33) *Savings association*. The term “savings association” has the same meaning as in part 561 of this chapter.

(34) *Security*. The term “security” includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting trust certificate, or in general, any instrument commonly known as a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(35) *Solicitation; solicit*. The terms “solicitation” and “solicit” refer to:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute, not execute, or revoke a proxy; or

(iii) The furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5(f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(36) *Subscription offering.* The term “subscription offering” refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

- (i) Eligible account holders as required by § 563b.3(c)(2);
- (ii) Supplemental eligible account holders as required by § 563b.3(c)(4);
- (iii) Members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5);
- (iv) Directors, officers and employees, as permitted by § 563b.3(d)(2); and
- (v) Eligible account holders, supplemental eligible account holders, and voting members as permitted by § 563b.3(d)(3).

(37) *Subsidiary.* A “subsidiary” of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(38) *Supplemental eligibility record date.* The term “supplemental eligibility record date” means the supplemental record date for determining supplemental eligible account holders of a converting association required by § 563b.3(c)(4). The date shall be the last day of the calendar quarter preceding the Office’s approval of the application for conversion.

(39) *Supplemental eligible account holder.* The term “supplemental eligible account holder” means any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record date.

(40) *Tax-qualified employee stock benefit plan.* A “tax-qualified employee stock benefit plan” is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust, meets the requirements to be “qualified” under section 401 of the Internal Revenue Code. A “non-tax-qualified employee stock benefit plan”

is any defined benefit plan or defined contribution plan which is not so qualified.

(41) *Underwriter.* The term “underwriter” means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers commission. The term “principal underwriter” means an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

(b) Terms defined in other parts of this chapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22732, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

Subpart A—Standard Conversions

§ 563b.3 General principles for conversions.

(a) *Applicability of subpart.* The provisions of this subpart shall govern conversions undertaken pursuant to any other subpart of this part unless clearly inapplicable.

(b) *General requirements.* No application for conversion shall be approved by the Office if:

(1) The plan of conversion adopted by the applicant’s board of directors is not in accordance with the provisions of this part;

(2) The conversion would cause the applicant to fail to meet any regulatory capital requirement of § 567.2 of this chapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended; or

(4) The converted association would not have its accounts insured by the FDIC.

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting savings association shall issue and sell its capital stock at a total price equal to the estimated *pro forma* market value of such stock in the converted savings association, based on an independent valuation, as provided in § 563b.7.

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings association.

(i) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(2), shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation equal to 100 shares.

(ii) Any shares not allocated in accordance with paragraph (c)(2)(i) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(3) Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings association based on their increased deposits in the converting association in the one year period preceding the eligibility record date shall be subordinated to all other subscrip-

tions involving the exercise of non-transferable subscription rights to purchase shares pursuant to paragraph (c)(2) of this section.

(4) Provide that, in plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the Office's approval, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of the converting association shall receive, without payment, non-transferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings association on the supplemental eligibility record date.

(i) Subscription rights received pursuant to this paragraph (c)(4) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to paragraphs (c)(2) and (c)(3) of this section.

(ii) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with paragraph (c)(2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c)(4) of this section.

(iii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(4), shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation (including the number of shares, if any,

allocated in accordance with paragraph (c)(2) of this section) equal to 100 shares.

(iv) Any shares not allocated in accordance with paragraph (c)(4)(iii) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(5) Provide that association voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, or one-tenth of one percent of the total offering of shares.

(i) Subscription rights received pursuant to this paragraph (c)(5) shall be subordinated to all rights received by eligible account holders and supplemental account holders to purchase shares pursuant to paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(ii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(5), shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of conversion.

(6) Provide that any shares of the converting savings association not sold to persons with subscription rights shall be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering, subject to the applicant demonstrating to the Office the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five

percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

(ii) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares per order basis until all orders have been filled.

(iii) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will achieve the widest distribution of the stock.

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the association's local community.

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total shares that any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

(8) Provide that the officers and directors of the converting association and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting association provided that the converting association has less than \$50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if

the converting association has more than \$500 million in total assets. If the converting association has between \$50 million and \$500 million, in total assets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less \$50 million divided by \$45 million. For example, for a converting association with \$275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of \$275 million less \$50 million, or \$225 million, divided by \$45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10, any shares owned prior to the merger conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director, or his or her associates, shall not purchase, without the prior written approval of the Office, the capital stock of the converted savings association except from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to:

(i) Negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted savings association; or

(ii) Purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

(10) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7 of this part; and specify the underwriting and/or other marketing ar-

rangements to be made to ensure the sale of all shares not sold to persons with subscription rights.

(11) Establish a time period within which the conversion must be completed prior to termination. The time period shall be not more than 24 months from the date the association members approve the plan of conversion and shall not be extended by the converting savings association or the Office.

(12) Provide that each savings account holder of the converting savings association shall receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting savings association.

(13) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings association, in accordance with the provisions of paragraph (f) of this section. An association converting to a federally chartered stock savings and loan association or savings bank shall include in its charter the following section:

Liquidation account. Pursuant to the requirements of the Office's regulations (12 CFR Part 563b) the association shall establish and maintain a liquidation account for the benefit of its savings account holders as of _____ ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the association's eligible savers' inchoate interest in the liquidation account, to the extent it is still in existence: *Provided*, That an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

(14) Provide for an eligibility record date, which shall be not less than one year prior to the date of adoption of the plan of conversion by the converting savings association's board of directors.

(15) Provide that the holders of the capital stock of the converted savings

association shall have exclusive voting rights, unless in the case of a State-chartered converted savings association State law requires savings account holders and/or borrowers of the converted savings association to have voting rights, in which case the charter of the converted savings association shall:

(i) Limit such voting rights to the minimum required by State law, and

(ii) Provide for the management of the converted savings association to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(16) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Office; and that the conversion may be terminated by such board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Office.

(17) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings association (by subscription or otherwise) or from an underwriter shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or officer.

(18) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted savings association's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall

be subject to the same restrictions as may apply to such restricted stock.

(19) Provide that the converting savings association shall:

(i) Promptly following the conversion register the securities issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such securities for a period of three years thereafter;

(ii) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(iii) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(20) Provide that the expenses incurred in the conversion shall be reasonable.

(21) Contain no provision which the Office shall determine to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.

(22) Provide that the converting savings association shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the association.

(23) Provide that eligible account holders with subscription rights have first priority to purchase conversion stock, tax-qualified employee stock benefit plans have second priority, supplemental eligible account holders have third priority, and other voting members who have subscription rights have fourth priority. If the final conversion stock valuation range exceeds the maximum conversion stock offering range, up to ten percent of the total offering of shares may be sold to the tax-qualified employee stock benefit plans. Furthermore, if the ESOP is not able to purchase conversion stock, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized but unissued shares only with prior OTS approval; and disclosure must be made in the conversion stock offering materials of the potential open market purchases or use of authorized but unissued shares to fund the ESOP and

its effects on the association and its shareholders.

(24) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That the converting savings association may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to association members pursuant to § 563b.6(c) of this part of the proxy statement authorized for use by the Office. The subscription offering may be closed before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(2) That directors, officers and employees of the converting savings association shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and tax-qualified employee stock benefit plans provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to the following conditions:

(i) The total number of shares which may be purchased under this paragraph (d)(2) shall not exceed 25 percent of the total number of shares to be issued in the case of a converting savings association with total assets of less than \$50 million or 15 percent in the case of a converting savings association with total assets of \$500 million or more; in the case of a converting savings association with total assets of \$50 million or more but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for ex-

ample, 20 percent in the case of a converting savings association with total assets of approximately \$275 million); and

(ii) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

(3) That any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares. The percentage amount by which any order for conversion stock exceeds 5% of the total offering of shares shall be aggregated with the percentage amounts by which all other orders for conversion stock exceed 5% of the total offering of shares. The aggregate amount shall not exceed 10% of the total offering of shares, except that this limitation shall not apply to the

purchases of the tax-qualified employee stock benefit plans.

(5) That the converting savings association may require association members to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: *Provided*, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to association members of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each association member who had been furnished with proxy soliciting materials, written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to an association member unless the association member returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(6) That the converting savings association may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) of this part to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting the receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the

converting savings association: *Provided*, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to the non-voting eligible account holders and supplemental eligible account holders of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each eligible account holder and supplemental account holder who had been furnished with a notice pursuant to paragraph (d)(11) of this section written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to a non-voting eligible account holder or supplemental eligible account holder unless the eligible account holder or supplemental eligible account holder returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(7) That any insignificant residue of shares of the converting savings association not sold in the subscription offering or in a public offering referred to in paragraph (c)(6) of this section may be sold in such other manner as provided in the plan with the Office's approval.

(8) That the number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares.

(9) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of up to 25 shares to the extent such shares are available (but the

aggregate price for any minimum share purchase shall not exceed \$500).

(10) That the converted savings association shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(11) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Office the feasibility of the method of exercising such rights and to such conditions as shall be provided in the plan of conversion. Such conditions shall include, but not be limited to, a condition requiring that orders for stock in the public offering or direct community offering shall first be filled, in the order of priority set forth in this section, by orders of persons exercising subscription rights.

(12) That the offering of stock to be sold in the subscription offering may give a preference to eligible account holders, supplemental eligible account holders, and other voting members residing in the association's local community.

(13) That the Office may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings association.

(e) *Determination of amount of qualifying deposit; predecessor and successor accounts.* (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings association as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings

accounts with total deposit balances of less than \$50 (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) *Liquidation account.* (1) Each converted savings association shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting savings association as of the latest practicable date prior to conversion. For the purposes of this paragraph, the savings association shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in paragraph (g)(2) of this section, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted savings association.

(2) The liquidation account shall be maintained by the converted savings association for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in such association. Each such eligible account holder and supplemental eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance ("sub-account").

(3) In the event of a complete liquidation of the converted savings association (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect

to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the association prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another SAIF-insured savings association is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving association. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the association not been converted as of the date of liquidation.

(4) The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates. Such initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of:

(i) The deposit balance in such savings account at the close of business on any other annual closing date subsequent to the eligibility record date or supplemental eligibility record date; or

(ii) The amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for such savings account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit balance.

In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. The converted association shall not be required to recompute the liquidation account and subaccount balances provided the converted association maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

(g) *Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans.* Each savings association that converts pursuant to this part shall be subject to the following conditions:

(1) No converted savings association may, for a period of one year from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to:

(i) A repurchase, on a *pro rata* basis, pursuant to an offer approved by OTS and made to all shareholders of such association;

(ii) A repurchase of qualifying shares of a director; or

(iii) A repurchase approved by OTS under paragraph (g)(3) of this section.

(2) No converted association shall declare or pay a dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted association to be reduced below the amount required for its liquidation account. Any dividend declared or paid on, or repurchase of, a converted association's capital stock also shall be in compliance with §§ 563.140-563.146 of this chapter.

(3) A savings association that is subject to paragraph (g)(1) of this section may not repurchase its capital stock within one year following its conversion to stock form, except that open market stock repurchases of up to five percent of its outstanding capital stock may occur during the first year after the conversion where extraordinary circumstances exist. The savings association must establish compelling and valid business purposes for the repurchases, to the satisfaction of the OTS. The savings association must file a notice with the Regional Director, with a copy to the Office of Examination and Supervision, at least ten days before commencement of the proposed repurchase. The notice must describe the proposed repurchase program and the effects of the proposed repurchases on the savings association's regulatory capital. OTS will not object to the proposed repurchase program if:

- (i) The repurchase does not adversely affect the savings association's financial condition;
- (ii) The savings association submits sufficient information to evaluate the repurchase program;
- (iii) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the repurchase program consistent with the savings association's business plan; or
- (iv) The repurchase program would not be contrary to other applicable regulations.

(4) Use of Stock Option and Management or Employee Stock Benefit Plans. No converted savings association shall, for a one year period from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan complying with (c)(6) of this section, unless each of the following requirements are met:

- (i) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;
- (ii) For stock option plans, the total number of shares of common stock for which options may be granted does not exceed ten percent of the amount of shares issued in the conversion;
- (iii) For management or employee stock benefit plans, the aggregate

amount of such plans shall not exceed three percent of the amount of shares issued in the conversion;

(iv) The aggregate amount of all shares obtained by a tax-qualified employee stock benefit plan(s) in the conversion, pursuant to (c)(6) of this section, or within one year following the conversion, and all the shares in a management or employee stock benefit plan, pursuant to paragraph (g)(4)(iii) of this section, shall not exceed ten percent of the total amount of shares issued in the conversion;

(v) Associations that have in excess of ten percent tangible capital following the conversion, may be granted, on a case by case basis, approval to establish a management or employee stock benefit plan pursuant to paragraph (g)(4)(iii) of this section in an amount up to four percent of the amount of the shares issued in the conversion, and an aggregate total of up to twelve percent for all plans established pursuant to paragraph (g)(4)(iv) of this section;

(vi) No individual shall receive more than twenty-five percent of the shares of any plan and directors who are not employees of the association shall not receive more than five percent of the stock individually, or thirty percent in the aggregate, of any plan;

(vii) All such plans, prior to establishment and implementation, are approved by the holders of a majority of the total votes eligible to be cast at any duly called meeting of shareholders of the association or its holding company, either annual or special, to be held not earlier than six months after completion of the conversion;

(viii) In the case of a savings association subsidiary of a mutual holding company, all such plans, prior to establishment and implementation, are approved by the holders (other than its parent mutual holding company) of a majority of the total votes eligible to be cast, at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the conversion;

(ix) For stock option plans, stock options are granted at no less than the market price at which the stock is trading at the time of grant;

(x) For management or employee stock benefit plans, no conversion stock is used to fund the plans;

(xi) The plans subject to this section must comply with the terms and amounts specified in paragraph (g)(4) of this section;

(xii) The plans subject to this section shall begin vesting no earlier than one year from the date the plans are approved by shareholders, shall not vest at a rate in excess of 20% a year, and shall not provide for accelerated vesting except in the case of disability or death;

(xiii) Disclosure in all proxy and related material distributed to shareholders in connection with the meeting at which the stock option plans and management stock benefit plans will be voted shall state that the plans comply with OTS regulations, that the OTS in no way endorses or approves the plans; and no written or oral representation to the contrary shall be made; and

(xiv) No later than five calendar days from the date of shareholder approval of any stock option or management benefit plans, the institution shall file with the OTS a copy of the approved plans and written certification that the plans approved by the shareholders are the same plans filed with and disclosed in the proxy materials.

(h) *Manipulative and deceptive devices.* In the offer, sale or purchase of securities issued incident to its conversion, no savings association, or any director, officer, attorney agent or employee thereof, shall:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(i) *Acquisition of the securities of converting and converted savings associations—(1) Prohibited transfers.* Prior to the completion of a conversion, no person shall transfer, or enter into any

agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.

(2) *Prohibition of offers and certain acquisitions.* Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting savings association issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings association issued in connection with the conversion in excess of the maximum purchase limitations established in the association's approved plan of conversion pursuant to paragraph (c)(7) or (d)(4) of this section.

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* (i) For a period of three years following the date of the completion of the conversion, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of a savings association converted in accordance with the provisions of this part 563b, without the prior written approval of the Office. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of a savings association converted in accordance with part 563b, without the prior written approval of the Office as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of a savings association where the person holds any combination of stock or revocable or irrevocable proxies of the association under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and 574.4(b) of this chapter. In obtaining the prior

written approval of the OTS under this paragraph (i), the criteria for approval under paragraph (i)(5) of this section should be addressed, if applicable, in the application, notice, or rebuttal required by part 574 of this chapter for the acquisition of stock of a savings association, as set forth in § 574.6(j) of this chapter.

(ii) A conversion shall be deemed completed on the date all of the converting association's conversion stock was sold.

(iii) An acquisition of shares shall be presumed to have been made if the acquiror entered into a binding written agreement for the transfer of shares. An offer shall be deemed made when communicated.

(4) *Exceptions.* (i) Paragraphs (i)(1) and (i)(2) of this section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

(A) Pertains only to securities to be purchased pursuant to paragraph (c)(6), (d)(7), or (d)(12); and

(B) Has the prior written approval of the Office.

(ii) Paragraphs (i)(2) and (i)(3) of this section shall not apply to any offer with a view toward public resale made exclusively to the association or to the underwriters or a selling group acting on its behalf.

(iii) Unless made applicable by the Office by prior advice in writing, the restriction contained in paragraph (i)(3) of this section shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the class of securities.

(iv) The restriction contained in paragraph (i)(3) of this section shall not apply to any offer to acquire or acquisition of beneficial ownership of more than ten percent of the common stock of a savings association by a corporation whose ownership is or will be substantially the same as the ownership of the savings association, provided that the offer or acquisition is

made more than one year following the date of completion of the conversion.

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this section shall not apply to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted association or holding company.

(vi) No application under paragraph (i)(3)(i) of this section generally shall be required for any proposed acquisition that requires prior approval of, or clearance by, the OTS under 12 CFR part 574 *provided* that the application required to be filed pursuant to part 574 of this chapter addresses in specific detail how the proposed transaction will comply with the criteria for approval under paragraph (i)(5) of this section, and the proposed acquisition is not opposed by the recently converted association subject to paragraph (i)(3)(i) of this section. Where, pursuant to this paragraph (i)(4)(vi), no separate application under paragraph (i)(3)(i) of this section is required, the prohibition on offers to acquire equity securities contained in paragraph (i)(3)(i) of this section shall not apply.

(5) *Criteria for approval.* The Office may deny an application involving an offer or acquisition of any security or proxies to vote securities of a converted association submitted under paragraph (i)(3) of this section if it finds that the proposed acquisition:

(i) Would frustrate the purposes of the provisions of this part 563b;

(ii) Would be manipulative or deceptive;

(iii) Would subvert the fairness of the conversion;

(iv) Would be likely to result in injury to the association;

(v) Would not be consistent with economical home financing;

(vi) Would otherwise be violative of law or regulation; or

(vii) Would not contribute to the prudent deployment of the association's conversion proceeds.

(6) *Optional charter provisions.* The plan of conversion may provide for the

charter of the converted savings association to include, for a specified period of not more than five years following the date of the completion of the conversion, any or all of the provisions of § 552.4(b)(8) of this chapter: *Provided*, that if the savings association is converting to a state-chartered stock association, it shall include in its application an opinion of counsel independent of the association that such charter provisions are permissible under the law of the applicable state. At any annual or special meeting of its shareholders, a converted state-chartered savings association may adopt any charter provision regarding the acquisition by any person or persons of its equity securities that would be permitted to be adopted by a savings association chartered by the state in which the converted savings association is chartered, and a converted federally-chartered savings association may adopt any such charter provision permitted under § 552.4 of this chapter.

(7) *Definitions.* (i) The term *person* includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of securities of a savings association.

(ii) The term *offer* includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security, for value: *Provided*, That for the purpose of this § 563b.3(i), the term “offer” shall not include:

(A) Inquiries directed solely to the management of a savings association and not intended to be communicated to stockholders, designed to elicit an indication of management’s receptivity to the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition and formula for determining price, or

(B) Nonbinding expressions of understanding or letters of intent with the management of a savings association regarding the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition,

and formula for determining price.

(iii) The term *acquire* includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(iv) The term *security* includes non-transferable subscription rights issued pursuant to a plan of conversion as well as a *security* as defined in 15 U.S.C. 78c(2)(10).

(j) *Priority of regulations.* The provisions of this part shall supersede all inconsistent charter and bylaw provisions of federally-chartered savings associations converting to the stock form.

[54 FR 49596, Nov. 30, 1989, as amended at 55 FR 13516, Apr. 11, 1990; 55 FR 27197, July 2, 1990; 56 FR 59867, Nov. 26, 1991; 57 FR 14347, Apr. 20, 1992; 58 FR 4314, Jan. 14, 1993; 59 FR 22733, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995; 64 FR 2810, Jan. 19, 1999; 65 FR 43090, July 12, 2000]

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) Information prior to approval of plan of conversion. (1) A savings association which is considering converting pursuant to this part and its directors, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the Office may require remedial measures including:

(i) A public statement by the association that its board of directors is currently considering converting pursuant to this part;

(ii) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings association’s board of directors as to assure the equitability of the conversion;

(iii) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the Office; and

(iv) Any other actions the Office may deem appropriate and necessary to assure the fairness and equitability of the conversion.

(2) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(3) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings association shall:

(i) Notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings association is located and/or by mailing a letter to each of its members; and

(ii) Have copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. The savings association may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Office, but may be submitted for comment to the Chief Counsel's Office, Corporate and Securities Division. Copies of the definitive statement, letter and press release shall be filed with the Office as part of the application for conversion.

(4) The statement, letter and press release, unless otherwise authorized by the Office shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the savings association from a Federal (or State, as the case may be) mutual association to a Federal (or State, as the case may be) capital stock savings association;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the savings association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed infor-

mation with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Office and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective and that members of the applicant will have an opportunity to file written comments including objections and materials supporting such objections to the Office;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Office or the approval of any appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(x) A brief statement as to the extent to which voting members will participate in the conversion;

(xi) A brief description of the proposed plan of conversion;

(xii) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xiii) A brief statement as to the extent to which directors, officers and employees will participate in the conversion;

(xiv) A statement that savings account holders will continue to hold accounts in the converted savings association identical as to dollar amount, rate of return and general terms, and that their accounts will continue to be insured by the FDIC;

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(xv) A statement that the savings association will continue to be a member of the Federal Home Loan Bank System;

(xvi) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion;

(xvii) A statement that the normal business of the savings association in accepting savings and making loans will continue without interruption; that the converted savings association will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(xviii) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xix) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the savings association.

(5) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements or describe the benefits of conversion or the value of the capital stock of the savings association upon conversion. In replying to inquiries, the savings association should limit its answers to the matters listed in paragraph (a)(3) of this section.

(b) *Notice of filing.* (1)(i) Immediately upon filing an application for conversion with the Office, the applicant shall publish a notice of the filing. If an application for conversion is not properly executed or is materially deficient or substantially incomplete, the Office may require a new application to be filed, publication of a new notice and an additional 20-day comment period. The applicant shall prominently post the notice in each of its offices and

publish the notice in at least one newspaper printed in the English language and having a substantial general circulation in each community in which an office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION FOR
CONVERSION TO CONVERT TO A STOCK SAV-
INGS AND LOAN ASSOCIATION OR A STOCK
SAVINGS BANK

Notice is hereby given that, pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations, _____ (fill in name of applicant) has filed an application with the Office of Thrift Supervision ("Office") for approval to convert to the _____ (State-chartered or Federally-chartered) stock form of organization. Copies of the application have been delivered to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and to the Regional Director at _____ (Address, including zip code, of Regional Director).

(ii) Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within twenty calendar days after the date of this notice. The OTS may, in its discretion, and upon written request, extend the twenty day comment period for an additional twenty calendar days. Failure to provide the written comments in twenty calendar days may preclude the pursuit of any administrative or judicial remedies. Two copies of the comments should be sent to the Chief Counsel, Business Transactions Division, one copy to the Corporate Activities Division and one copy to the Regional Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the Regional Director's Office. A copy of the plan of conversion may also be inspected at the home office and each branch office of the applicant.

(2) If a significant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.

(3) Promptly after publication of the notice or notices prescribed in paragraphs (b)(1) and (b)(2), the applicant shall file four copies of each notice with the Office accompanied by an affidavit of publication from each publisher.

(c) Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or any part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled “confidential,” and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled “confidential” and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. Preliminary soliciting materials will be made available upon filing, unless such materials are not otherwise available to the public and are bound and labeled “confidential.” The applicant will be advised of any decision by the Office to make public information designated “confidential” by the applicant. Even though sections of the application are considered “confidential,” as far as public inspection thereof is concerned, to the extent it deems necessary, the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994; 59 FR 61262, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of a savings association for the meeting at which a conversion plan will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the savings association where the total number of persons solicited is not more than 50;

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than:

- (i) Name the savings association;
- (ii) State the reason for the advertisement;
- (iii) Identify the proposal or proposals to be acted upon by association members; and
- (iv) Urge the member to vote at the meeting.

(b) *Use of proxy soliciting material to be authorized.* No proxy soliciting material required to be filed with the Office prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Office. Proxy material authorized for use by the Office shall be mailed to the association members within ten days of such authorization unless extended by the Office in writing.

(c) *Information to be furnished association members.* No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Office.

(d) *Requirements as to proxy.* (1) The form of proxy:

- (i) Shall indicate in bold face type whether the proxy is solicited on behalf of the management;
- (ii) Shall provide specifically designated blank spaces for dating and signing the proxy;
- (iii) Shall identify clearly and impartially each matter or group of related matters intended to be acted upon;
- (iv) Shall be clearly labeled “Revocable Proxy” in bold face type (at least as large as 18 point);

(v) Shall describe any charter or State law requirement restricting or conditioning voting by proxy;

(vi) Shall contain an acknowledgment by the person giving the proxy that he has received a proxy statement prior to signing the form of proxy;

(vii) Shall contain the date, time and place of meeting, if practicable;

(viii) Shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon; and

(ix) Shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(1)(viii) of this section a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so specified, the votes will be cast as indicated in bold face type on the form of proxy.

(4) Each voting member must be furnished a form of proxy conforming with paragraph (d) of this section. No applicant shall use previously-executed proxies.

(e) *Material required to be filed.* (1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and

radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material. Speeches may, but need not be, filed with the Office prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Office not later than the date such material is first sent or given to association members. All materials filed pursuant to this paragraph (e)(3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary Copy". Such preliminary copies shall be public unless otherwise deemed confidential pursuant to § 563b.4(c) of this part.

(6) Unless requested by the Office, copies of replies to inquiries from members of the savings association and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to paragraph (e) of this section.

(7) Where any proxy statement, form of proxy or other material filed pursuant to paragraph (e) of this section is

amended or revised, four of the required copies of such amended or revised material filed with the Office shall be marked to indicate clearly and precisely the changes effected therein subsequent to the last prior filing.

(f) *Mailing communications for associations members.* If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate; and

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such association member.

(2) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Office shall be mailed by the applicant to such of the association members specified in paragraph (f)(1)(i) of this section as the association member shall designate.

(3) Any such material which is furnished by the association member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other containers therefor and postage or payment for postage.

(4) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

(g) *False or misleading statements.* (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication,

written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.

(2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Office and authorized for use shall not be deemed a finding by the Office that such material is accurate or complete or not false or misleading, or that the Office has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.

(3) If a solicitation by management violates any provision of this section, the Office may require remedial measures including:

(i) Correction of any such violation by means of a retraction and new solicitation;

(ii) Rescheduling of the meeting for a vote on the conversion; and

(iii) Any other actions the Office may deem appropriate in the circumstances in order to ensure a fair vote.

(h) *Prohibition of certain solicitations.* No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:

(1) Any undated or post-dated proxy;

(2) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members;

(3) Any proxy which is not revocable at will by the association member giving it; or

(4) Any proxy which is part of any other document or instrument (such as an account card).

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994]

§ 563b.6 Vote by members.

(a) *Vote at special meeting.* Following approval by the Office of an application for conversion, the plan of conversion

shall be submitted to a special meeting of members, unless in the case of a State-chartered converting savings association State law requires that the plan be considered at an annual meeting of members.

(b) *Determining members eligible to vote.* The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall not be more than 60 nor less than 10 days prior to the date of such meeting, without prior approval of the Office, unless State law requires a different voting record date.

(c)(1) *Notice to members.* Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Office. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless State law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity:

(i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the association's records; and

(ii) In the case of a State-chartered association, where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1) of this section. Without prior approval by the Office, the special meeting of members shall not be held fewer than 20 days after the

last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to §563b.3(d)(1) of this subpart A; and

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following:

(1) Item 6. Management Remuneration.

(2) Item 7. Business of the Applicant. Paragraphs (c) through (m), and (o).

(3) Item 14. Financial Statements.

(4) Item 15. Consents of Experts and Reports. Paragraph (b).

(B) The disclosure requirements of items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under item 16.

(E) The statement contained in §563b.8(u) of this part shall be included.

(d) *Notice to eligible account holders and supplemental account holders who are not voting members.* The converting savings association may give notice of the proposed conversion and the meeting of the association members by letter or other written communication authorized for use by the Office to eligible account holders and supplemental account holders who are not voting members. The contents of the notice shall be subject to §§563b.4(a)(4) and (a)(5), and 563b.5(g) of this part; the use of the notice shall be subject to §563b.5(b) of this part; and filing of the notice with the Office shall be subject to §563b.5(e)(1), (e)(3), (e)(5), and (e)(7) of this part.

(e) *Required vote.* The plan shall be approved by a vote of at least a majority of the total outstanding votes of

the association members, unless State law requires a higher percentage for a State-chartered converting savings association, in which case the higher percentage shall be used. Voting may be in person or by proxy.

§ 563b.7 Pricing and sale of securities.

(a) *General.* (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Office of the application for conversion and until the proxy statement has been authorized for use by the Office.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Office unless the offering circular meets the requirements of this part or part 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared effective by the Office.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with the applicant.

(b) *Distribution of offering materials.* Any preliminary offering circular which has been filed with the Office may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this part. No final offering circular shall be distributed until it has been declared effective by the Office. The declaration of effectiveness of the final offering circular by the Office shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (i) of this section, or beyond such period of time as the Office shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under paragraph (k) of this section.

(c) *Estimated price information.* If the offering is to commence prior to the meeting of the association members held to vote on the plan of conversion, the proxy statement authorized for use by the Office shall set forth the esti-

mated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than \$50 per share and the minimum no less than \$5 per share.

(d) *Prohibited representations.* The Office will review the price information required under this section in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of association members, and will review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that such price information has been approved by the Office or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Office or that the Office has passed upon the accuracy or adequacy of any offering circular covering such shares.

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Office or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11) of this part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Office shall accept. The term “underwriting commissions” includes underwriting discounts.

(f) *Pricing materials.* (1) In considering the pricing information required under

paragraph (c) of this section, the Office will apply the following guidelines:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Office;

(ii) The materials shall contain a full appraisal, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein;

(iii) To the extent that the appraisal is based on a capitalization of the *pro forma* income of the converted savings association, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, such existing stock associations must be reasonably comparable to the converting savings association in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings;

(iv) In those instances where the initial appraisal report is deemed to be materially deficient and/or substantially incomplete, the OTS may deem the entire conversion application materially deficient and/or substantially incomplete, and in accordance with the OTS applications processing rules, 12 CFR part 516, decline to further process the application.

(2) In addition to the information required in paragraph (f)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Office the independence and expertise of any person preparing materials under this paragraph. No appraiser shall serve as an underwriter or selling agent under the same plan of conversion. No affiliate of an appraiser may act as an underwriter or selling agent unless procedures are followed and representations made to ensure that an appraiser is separate from the underwriter or selling agent affiliate

and the underwriter or selling agent affiliate does not make recommendations or in any way impact the appraisal. No appraiser shall receive any other fee except for the fee for services rendered in connection with such appraisal.

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request.

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Office has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting savings association shall have adopted in its plan of conversion the optional provisions set forth in § 563b.3 (d)(5), (d)(6), or (d)(11) of this part, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly complete such order forms.

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the Office's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain an amendment to the Office's approval. If appropriate, the Office will condition its approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price

shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(4) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the maximum number of shares that may be purchased pursuant to the subscription rights;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

(iii) State the maximum subscription price per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(vi) Indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by withdrawal from a savings account or certificate of deposit, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the order form;

(viii) Contain an acknowledgment by the account holder or other person signing the order form that he or she has received a final offering circular prior to so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are non-transferable and will become void at the end of the subscription period. The

order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

(5) The order form may provide that it may not be modified without the applicant's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from a savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(h) *Withdrawal from certificate accounts.* Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

(i) *Period for completion of sale.* The sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the Office.

(j) *Interest on subscriptions and direct community offering purchase orders.* The converting savings association shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the association to purchase shares of capital stock in the subscription offering or direct community offering from the date

payment is received by the association until the conversion is completed or terminated.

(k) *Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular.* (1) The Office may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i) of this section, provided that no single extension of time shall exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting savings association shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Office pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription:

(i) At any time prior to 20 days before the end of the extension period; or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: *Provided*, That if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings association.

(3) For the purpose of paragraph (k) of this section, the public offering shall be deemed to commence upon the filing with the Office of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Office of the final offering circular.

(4) After the expiration of subscription rights, the converting savings association shall file with and have declared effective by the Office a post-effective

amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings association immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting savings association shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his or her subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Office pursuant and subject to the provisions of paragraph (k)(2) of this section.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22734, May 3, 1994; 59 FR 61262, Nov. 30, 1994]

§ 563b.8 Procedural requirements.

(a) Filing an application for conversion. An applicant that desires to convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the Office.

(b) *Return of improperly executed or materially incomplete filings.* (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3) of this section, any application for approval that does not contain copies of:

- (i) A plan of conversion;
- (ii) A preliminary proxy statement with signed financial statements; and
- (iii) A preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant.

Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form

of proxy may be returned by the Office to the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Office until the applicant requests and the Office consents to the filing of the additional materials set forth in paragraph (b)(2) of this section.

(c) *Additional filing requirements.* An applicant whose plan of conversion has been approved by the Office shall fulfill the following requirements.

(1) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

- (i) The total number of votes eligible to be cast;
- (ii) The total number of votes represented in person or by proxy at the meeting;
- (iii) The total number of votes cast in favor of and against each such matter; and
- (iv) The percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared for the savings association by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion an opinion of counsel to the effect that:

- (i) The meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation;
- (ii) All requirements of State law applicable to the conversion have been complied with; and
- (iii) If the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Office ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

(d) *Termination or amendment of charter.* (1) Upon approval of a plan of conversion by the members of a State-chartered savings association or a Federal savings association which is converting to a State-chartered stock savings association, the charter of such savings association shall terminate effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. If such converting savings association is a Federal savings association, its Federal charter shall promptly be surrendered to the Office for cancellation. A savings association converting to a State-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in a form consistent with part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual association converting to a federally-chartered stock association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a Federal or a State-chartered mutual savings association converting to a State-chartered stock savings association, unless State law otherwise prescribes, the corporate existence of the converting savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

(e) *Number of copies; place of filing; binding; signatures.* (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Office, one copy shall be filed with the Regional Director or his or her designee and the remaining copies with the Chief Counsel, Business

Office of Thrift Supervision, Treasury

§ 563b.8

Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Whenever a requirement is made under this part for the filing of ten or more copies of any document with the Office, three copies shall be filed with the Regional Director or his or her designee and the remaining copies with the Chief Counsel, Business Transactions Division. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the Regional Director or his or her designee and another with the Chief Counsel, Business Transactions Division. Other copies shall be conformed. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed by:

- (i) A duly authorized representative of the applicant on its behalf;
 - (ii) Its principal executive officer;
 - (iii) Its principal financial officer;
 - (iv) Its principal accounting officer;
- and
- (v) At least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4)(i) Except as provided in paragraph (e)(4)(ii) of this section, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that:

(A) He or she has read such application or amendment;

(B) In the opinion of each such person, he or she has made such examination and investigation as is necessary

to enable him or her to express an informed opinion that such application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this part and forms prescribed hereunder; and

(C) Each such person holds such informed opinion.

(ii) The representations specified in paragraph (e)(4)(i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Office within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he or she does not so represent.

(f) *Requirements as to paper and printing.* (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, applications for any portion thereof may be prepared by any similar process which, in the opinion of the Office, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(g) *Method of preparation.* Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (n) of this section in response to the items of

the appropriate form in lieu of furnishing the information in item-and-answer form, and shall omit the captions and text of all items and instruction. Every application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(h) *Interpretation of requirements.* (1) Unless the context indicates otherwise, the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

(i) *Additional information.* In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they made, not misleading.

(j) *Information unknown or not reasonably available.* Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within

whose knowledge the information rests and stating the result of a request made to such person for the information.

(k) *Incorporation of certain information by reference.* (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (1) of this section. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(l) *Summaries or outlines of documents.* Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(m) *Legibility of materials.* The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein, shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large

and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(n) *Presentation of information.* (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins.

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 of this chapter governs the certification, form and content of such financial statements, including the basis of consolidation.

(o) *Application of amendments to regulations and forms.* (1) The form and contents of any filing made under the pro-

visions of this part need conform only to the applicable regulations and forms then in effect, and contain the information, including financial statements specified therein, required at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (o)(2) of this section.

(2) Whenever the Office prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition ceases to be effective.

(p) *Consents of experts.* (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part are named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to paragraph (p) of this section shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his or her report, a reference shall be made in the list to the report containing such consent.

(q) *Consents of persons about to become directors.* If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

(r) *Date of filing.* The date on which any documents are actually received by the Office in the manner prescribed in this part shall be the date of filing thereof.

(s) *Amendments.* All amendments to any application under this part shall be

filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(t) *Pre-filing conferences with applicants.* (1) The staff of the Office, including the Regional Director or his or her designee, will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Office if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under paragraph (t) of this section, the staff of the Office will not undertake to prepare material for filing but will limit themselves to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

(u) *Review of the Office's action.* Any person aggrieved by a final action of the Office which approves, with or without conditions, or disapproves a plan of conversion pursuant to this part may obtain review of such action by filing in the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or in the U.S. Court of Appeals for the District of Columbia Circuit, a written petition praying that the final action of the Office be modified, terminated or set aside. Such petition must be filed within 30 days after publication of notice of such final action in the FEDERAL REGISTER, or 30 days after the mailing by the applicant of the notice to members as provided for in § 563b.6(c) of this part, whichever is later. The further procedure for review is as follows: A copy of the petition is forthwith transmitted to the Office by the clerk of the court and thereupon the Office files in the court the record in the proceeding, as provided in section 2112 of title 28 of the U.S. Code.

Upon the filing of the petition, the court has jurisdiction, which upon the filing of the record is exclusive, to affirm, modify, terminate, or set aside in whole or in part, the final action of the Office. Review of such proceedings is had as provided in chapter 7 of title 5 of the U.S. Code. The judgment and decree of the court is final, except that they are subject to review by the Supreme Court upon *certiorari* as provided in section 1254 of title 28 of the U.S. Code.

(v) *Post-conversion reports.* The applicant shall file such post-conversion reports concerning its conversion as the Office may require.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 14348, Apr. 20, 1992; 59 FR 22735, May 3, 1994; 60 FR 66718, Dec. 26, 1995]

§ 563b.9 Conversion of a savings association in connection with the formation of a holding company.

A savings association may convert to the stock form pursuant to this subpart A as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted savings association. In such a transaction eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, non-transferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part to purchase capital stock of the newly-formed holding company in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this subpart A shall apply to a conversion under this section.

§ 563b.10 Conversion of a savings association through merger with an existing holding company or stock savings association.

A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part may convert to stock form by merging with an existing holding company or interim Federal or state chartered stock association in a transaction in which stock of the existing holding company or resulting association is issued.

[59 FR 22735, May 3, 1994]

§ 563b.11 Convenience and needs considerations.

In reviewing an application under this subpart, the Office will examine the extent to which the conversion will affect the convenience and needs of the communities to be served by the converted savings association. The Office will review the applicant's record under part 563e of this chapter. In addition, the Office will scrutinize the business plan of the applicant. Each applicant must demonstrate that the proposed deployment of proceeds contained in its business plan will help meet the credit and lending needs of the communities served by the applicant. Also, the Office will consider other relevant factors relating to the association's performance in meeting the convenience and needs of the community. Based on an assessment of the applicant's record under part 563e of this chapter, the applicant's business plan and other relevant factors, the Office may approve the application, deny the application, or approve the application on the condition that the applicant improve certain aspects of its CRA performance record or address particular credit or lending needs of the communities that it serves.

[59 FR 61262, Nov. 30, 1994]

Subpart B [Reserved]**Subpart C—Voluntary Supervisory Stock Conversions****§ 563b.20 Scope of subpart.**

(a) Except as the Office may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of savings associations as authorized, ordered or concurred in by the Office or the FDIC pursuant to sections 5(i) (1) and (2), 5(o)(2)(C), and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (o)(2)(C), and (p).

(b) All of the provisions of Subpart A of this part shall apply to a supervisory conversion undertaken pursuant to this subpart unless clearly inapplicable.

§ 563b.21 Voluntary supervisory conversions.

(a) A voluntary supervisory conversion of a savings association pursuant to this subpart may involve the sale of a converting association's shares directly to an acquiror(s), which may be a person, company, depository institution, or depository institution holding company. The conversion may result in the converting association being merged into or consolidated with an existing or newly created depository institution, but only as authorized by and in accordance with any limitations or restrictions imposed by applicable laws and regulations.

(b) A majority of the directors of the converting association must adopt a plan of voluntary supervisory conversion that complies with the provisions of this subpart. The members of the association have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interests in the converted association, unless otherwise provided by the OTS. The members shall have interests in a liquidation account, if one is established, pursuant to § 563b.28 of this subpart.

[57 FR 49380, Nov. 2, 1992]

§ 563b.22 Purpose of subpart.

The purpose of this subpart is to give guidance to savings associations and potential acquirors of the stock of converting savings associations regarding the qualification of savings associations for a supervisory conversion under this subpart, and guidance as to the extent to which the Office will permit, by means of a supervisory conversion, deviations from the substantive and procedural requirements adopted by the Office for standard conversions under subpart A of this part.

§ 563b.23 Authorization of supervisory conversions.

(a) The OTS may authorize or order a voluntary supervisory conversion if a savings association files an application containing the information and documents specified in § 563b.27 of this subpart, in accordance with the procedures specified in § 563b.29 of this subpart,

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and meets the qualification standards specified in § 563b.24 of this subpart. If the OTS authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.30 of this subpart must be fulfilled and the resulting institution and the purchaser(s) of its conversion stock must comply with the requirements of § 563b.31 of this subpart.

(b) In connection with approval of an association's conversion, the OTS may impose conditions and restrictions on the converting or resulting institution, the acquiror, and controlling parties, directors and officers of either, to prevent unsafe or unsound practices, to protect the deposit insurance funds and the public interest, and to prevent potential injury or detriment to the converting or resulting association. The OTS generally will exercise this authority consistent with applicable supervisory policies.

(c) The OTS may deny an association's conversion if the Office determines that the converting or resulting association, the acquiror, or controlling parties or directors and officers of either, have engaged in unsafe or unsound practices in connection with the transaction, or that the transaction is detrimental to or would cause potential injury to the converting or resulting association, the Federal deposit insurance funds or is contrary to the public interest.

(d) For three years following the date of completion of a voluntary supervisory conversion, neither any controlling shareholder nor the resulting institution may acquire shares from minority shareholders without the prior approval of the OTS.

[57 FR 49381, Nov. 2, 1992]

§ 563b.24 Qualification for supervisory conversion of SAIF-insured associations.

(a) The OTS in its discretion may authorize the supervisory conversion of a SAIF-insured savings association upon finding that the association:

(1) Is significantly undercapitalized; and

(2) Would be a viable entity as determined under § 563b.26 of this subpart, following the conversion.

(b) The OTS in its discretion also may authorize the supervisory conversion of a SAIF-insured savings association upon finding that the association:

(1) Is undercapitalized;

(2) Demonstrates by clear evidence that a standard conversion that would raise sufficient capital to enable the association to be adequately capitalized is not feasible; and

(3) Would be a viable entity as determined under § 563b.26 of this subpart, following the conversion.

(c) Notwithstanding any other provision of law, the OTS also may authorize, (or in the case of a Federal savings association require), the conversion of a savings association into a Federal savings association pursuant to section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p).

[57 FR 49381, Nov. 2, 1992]

§ 563b.25 Qualification for supervisory conversion of BIF-insured savings associations.

(a) The Office may, in its discretion, concur with the determination of the FDIC that a BIF-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Office in accordance with section 5(o)(2)(C) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(C), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank; or

(b) The Office may, in its discretion, authorize a BIF-insured savings association to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met:

(1) The association's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the association is a going concern; and

(2)(i) A sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the association to meet its capital requirement as established by the FDIC immediately upon completion of the conversion; or

(ii) The FDIC has indicated that, based upon the association's proposed post-conversion operating plan, the association would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

§ 563b.26 Viability of converted savings association.

(a) An application of a SAIF-insured savings association to convert pursuant to this subpart may be approved by the Office in its discretion if it finds that the SAIF-insured savings association will be a "viable entity" following the conversion.

(b) A converting SAIF-insured association is a "viable entity" if:

(1) As part of the plan of conversion:

(i) The capital being infused into the association through its conversion is sufficient to cause the converted or resulting association to be adequately capitalized; provided that the OTS, in its discretion, may require higher capitalization as it deems appropriate for safety and soundness reasons; and

(ii) The converting association, its proposed conversion, and any acquiror(s) comply with applicable supervisory policies; and

(2) The transaction taken as a whole is in the best interest of, and does not present potential for injury or detriment to, the converting association, the federal deposit insurance funds, or the public interest.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 49381, Nov. 2, 1992]

§ 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for OTS approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.29 of this subpart:

(a) A plan of conversion adopted by a majority of the directors of the association, which shall contain at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, per-unit par value, number,

and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers and their affiliates and associates (as defined in § 563b.2(a) of this part); a description of the liquidation account, if required under § 563b.28 of this subpart or if otherwise established; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) A business plan, which shall contain a description of the proposed operating policies of the savings association or the resulting savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The projections should show the continuing ability of the converted association to meet applicable capital requirements. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application, Control Act notice, or rebuttal submission for each proposed conversion stock acquiror as may be required under part 574 of this chapter, if applicable, and any required prior-conduct certification pursuant to RB 20¹ for each such acquiror.

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

¹Regulatory Bulletins are available at the address listed in § 516.40(b) of this chapter.

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(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(l) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the OTS.

(m) A description of the estimated expenses of the voluntary supervisory conversion to the savings association.

(n) The association's most recent audited financial statements and Thrift Financial Report with an appropriate explanation to support the determination that the association's current capital levels qualify it to undertake a supervisory conversion.

(o) *Pro forma* financial statements prepared in accordance with the regulations and policies of the OTS to reflect the effects of the transaction. These *pro forma* financial statements should be supplemented to identify the converting or resulting association's tangible, core, and risk-based capital levels and show the appropriate adjustments necessary to compute such capital levels.

(p) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered savings association to state stock form is authorized under applicable state law, if applicable.

(q) A specific description of any of the features of the savings association's application that do not conform to the requirements of this subpart.

(r) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

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(s) A statement of all other applications required pursuant to federal or state banking laws for all transactions related to the association's conversion, copies of all decisions, orders, opinions, and other similar dispositive documents issued by such regulatory authorities relating to such applications, and, if requested by the OTS, copies of such applications and related documents.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 49381, Nov. 2, 1992; 66 FR 13009, Mar. 2, 2001]

§ 563b.28 Liquidation account.

A liquidation account must be established in accordance with the requirements set forth at § 563b.3(f) of this part; provided, however, that the OTS may waive this requirement if the converting association's tangible capital is less than zero, or for other good cause.

[57 FR 49382, Nov. 2, 1992]

§ 563b.29 Procedural requirements.

(a) *Filing of voluntary supervisory conversion application.* A savings association seeking to convert pursuant to this subpart shall file with the OTS the information and documents specified in § 563b.27 of this subpart.

(b) *Incomplete application.* An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 of this part shall constitute an incomplete application, and the Regional Director shall continue to seek other appropriate supervisory resolutions of the association's financial condition pending the filing of a complete application.

(c) [Reserved]

(d) *Termination or amendment of charter.* (1) Upon approval by the Office of a plan of supervisory stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-chartered savings association, its federal

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charter shall be surrendered promptly to the Office for cancellation. A savings association converting to a state-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual savings association converting to a federally-chartered stock savings association shall apply to amend its charter and bylaws to read in a form consistent with part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual savings association converting to a federally-chartered stock savings association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a federal or state-chartered mutual savings association converting to a state-chartered stock savings association, unless state law otherwise prescribes, the corporate existence of the converting mutual savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

[54 FR 49596, Nov. 30, 1989, as amended at 55 FR 13516, Apr. 11, 1990; 57 FR 14348, Apr. 20, 1992. Redesignated at 57 FR 49382, Nov. 2, 1992; 60 FR 66718, Dec. 26, 1995]

§ 563b.30 Conditions of approval.

The Office's approval of a supervisory conversion application will be conditioned upon the following:

(a) Completion of the sale of conversion stock within a maximum of three months after the Office approves the application, or within such additional period as the OTS may for good cause grant;

(b) Compliance with all filing requirements of 12 CFR parts 563b and 563g;

(c) Submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the association's conversion stock;

(d) Compliance with all applicable laws, rules, and regulations; and

(e) Satisfaction of any other requirement or conditions the Office may impose.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 14348, Apr. 20, 1992. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.31 Sale of conversion stock.

Each savings association that converts pursuant to this subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR part 563g.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.32 Expenses.

Expenses incurred by a savings association in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a SAIF-insured savings association, shall not be in an amount such that the payment of such expenses would render the proceeds to the association from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.33 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by a savings association would not be an unsafe or unsound practice or represent a sale of control. The Office shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his or her affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of a

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savings association generally will be disfavored.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

Subpart D [Reserved]

Subpart E—Forms

§ 563b.100 Form AC—Application for Conversion.

FORM AC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION
1700 G Street, NW., Washington, DC 20552

APPLICATION FOR CONVERSION

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Date of Application

GENERAL INSTRUCTIONS

A. Rules as to Use of Form AC

Form AC shall be used by any savings association seeking approval by the Office of conversion from the mutual to the stock form of organization pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations.

B. Application of Rules and Regulations

Attention is directed to § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in § 563b.2 also should be noted.

Item 1. Form of Application

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by part 563b of the Rules and Regulations Applicable to All Savings Associations.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Office, they will be conducted by, or as approved by, the Office at the ex-

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pense of the applicant; and applicant will pay the costs thereof as computed by the Office.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(e)(4) of the Rules and Regulations Applicable to All Savings Associations, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section: (1) That each such person has read this application; (2) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of part 563b of the Rules and Regulations Applicable to All Savings Associations and forms thereunder; and (3) that each such person holds such informed opinion.

Attest:

Applicant

By

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this item will be a basis for the Office's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be

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prepared in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. Sequence and Timing of the Plan

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State or other regulatory authorities (other than the Office). Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or direct community marketing of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates

If the applicant's plan of conversion contains an eligibility record date substantially earlier than one year prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date.

Indicate the circumstances that will require the use of a supplemental eligibility record date.

Item 7. Expenses Incident to the Conversion

Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal .....	.....
Postage and Mailing .....	.....
Printing .....	.....
Escrow or Agent Fees .....	.....
Underwriting Fees .....	.....
Appraisal Fees .....	.....
Transfer Agent Fees .....	.....
Auditing and Accounting .....	.....
Proxy Solicitation Fees .....	.....
Advertising .....	.....
Other Expenses .....	.....
Total .....	.....

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers; if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this item.

2. If the applicant has any category of expense exceeding \$10,000 which is not specified in this item, such expense shall be itemized

rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification

State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director or officer of the applicant will be insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such.

Item 9. Federally Chartered Stock Savings Associations

State whether the converting savings association is applying to amend its charter and bylaws to read in a form consistent with part 552 of the Rules and Regulations Applicable to Federal Savings Associations.

EXHIBITS

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors

Set forth a certified copy or copies of a resolution or resolutions of the board of directors: (1) Adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Deposit Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. Copies of Documents, Contracts and Agreements

Furnish the following documents, contracts and agreements:

- Proposed certificates for capital stock and any other securities to be issued;
- Proposed order forms with respect to the subscription rights;
- Proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(i)(7);
- Any proposed stock option plan and form of stock option agreement;
- Any proposed management employment contracts;
- Any contract described in response to item 6 of Form PS;
- Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS;

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(h) Any material loan agreements relating to borrowing by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Office;

(i) Any appraisal agreement or proposed agreement, underwriting contracts or agreements among underwriters;

(j) Any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association;

(k) Any proposed contracts or agreements among members of a group regarding the purchase of unsubscribed shares pursuant to § 563b.3(d)(2);

(l) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion that they are acting independently;

(m) Any documents referred to in the answer to item 8 of Form AC;

(n) Any trustee agreements or indentures;

(o) Any agreements for the making of markets or the listing on exchanges of the stock of the converted savings association.

Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for documents which by their nature cannot be practically expected until a later time required by subdivisions (i) and (k) in which case they shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel

Furnish an opinion of counsel for the applicant regarding each of the following matters:

(a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities;

(b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan;

(c) The legal sufficiency of the applicant's bylaws;

(d) The continuation of insurance of the applicant's accounts by the Federal Deposit Insurance Corporation after conversion;

(e) The type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted savings association;

(f) A certification that the proposed charter and bylaws conform to part 552 of this chapter or if not a statement to that effect.

Matters listed in subdivisions (b), (c) and (e) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

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Exhibit 4. Federal and State Tax Opinions or Ruling

(a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to the various account holders who receive nontransferable subscription rights to purchase capital stock.

Instruction. The Office recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Office may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Office may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or, if applicable, a ruling from the appropriate state taxing authority to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be located upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. Valuation Materials

Furnish any materials required to be filed by § 563b.7 regarding the valuation to the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

Exhibit 6. Notice to Members

Furnish the notices to the applicant's members required by § 563b.4(a) and (b).

Exhibit 7. Other Materials

(a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j)(2).

(b) Furnish all consents required to be filed by § 563b.8(p) and (q).

(c) If applicable, furnish the statement required by item 5 of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) Furnish any powers of attorney employed pursuant to § 563b.8(e)(3).

(e) Furnish the cross reference sheet referred to in § 563b.8(g).

(f) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c)(2).

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Exhibit 8. Business Plans

(a) Furnish a consolidated business plan. The converting association shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

(b) Applicant should follow § 563b.4(c) if the business plan is to be deemed confidential.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22735, May 3, 1994]

§ 563b.101 Form PS—Proxy Statements.

FORM PS

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

PROXY STATEMENT

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

PROXY STATEMENT FORM

Index to Items

- Item 1. Notice of Meeting
- Item 2. Revocability of Proxy
- Item 3. Persons Making Solicitation
- Item 4. Voting Rights and Vote Required for Approval
- Item 5. Directors and Executive Officers
- Item 6. Management Remuneration
- Item 7. Business of the Applicant
- Item 8. Description of the Applicant's Plan of Conversion
- Item 9. Description of Capital Stock
- Item 10. Capitalization
- Item 11. Use of New Capital
- Item 12. New Charter, Bylaws or Other Documents
- Item 13. Other Matters
- Item 14. Financial Statements
- Item 15. Consents of Experts and Reports
- Item 16. Attachments

INFORMATION REQUIRED IN CONVERSION PROXY STATEMENT

Notes

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or rela-

tionships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the Chief Counsel or the Deputy Chief Counsel for Securities and Corporate Structure by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement and the full address, ZIP code and telephone number of the applicant.

In accordance with § 563b.5(d)(4) of this part, the applicant shall not use previously-executed proxies to vote on the plan of conversion.

Item 2. Revocability of Proxy

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation

(a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he or she intends to oppose any action intended to be taken by the management and indicate the action which he or she intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to items 5 through 16, but must include such

information as to make such solicitations comply with § 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval

(a) Describe briefly the voting rights of each class of association members, state the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled. Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

(d) The applicant shall not use previously-executed proxies to vote on the plan of conversion.

Item 5. Directors and Executive Officers

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see items 401 and 404 of Regulation S-K, 17 CFR 229.401 and 404, and item 6 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words “registrant” and “issuer” in those regulations shall refer to the applicant and the word “Commission” shall refer to the Office.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

Item 6. Management Remuneration

Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 402 of Regulation S-K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words “registrant” and “Commission” in those regulations shall refer to the applicant and to the Office, respectively.

Item 7. Business of the Applicant

(a) *Narrative description of business.* (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the

business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the association as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the applicant in the summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (i), (ii), and (iii) of this paragraph with respect to liquidity, capital resources, and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(i) *Liquidity.* Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) *Committed resources.* (A) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the

anticipated source of funds needed to fulfill the commitments.

(B) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(B) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(C) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(E) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of non-accrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

Instructions. 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-

to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7(c) need only include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(i) of this item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined in the liquidity regulations of the Office.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-harbor rule for projections, § 563d.3b-6, under the circumstances specified in that rule.

7. Applicants which elect to provide narrative explanations of supplementary information disclosed in accordance with SFAS 89 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the information is combined, it shall be located in reasonable proximity to the discussion and analysis. If the information is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted if there is an appropriate cross reference to the explanations provided pursuant to SFAS 89.

8. Applicants which elect not to provide explanations of supplementary information disclosed in accordance with SFAS 89 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 89 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph (2). The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both

the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the applicant.

(ii) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor

rule for projections, § 563d.3b-6, under the circumstances specified in that rule.

(d) *Lending activities.* (1) Briefly describe the applicable Federal and State restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) As to the lending area of the applicant, describe briefly (i) the lending area restrictions, if any, applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(i) Average yield during the period on: (A) Loan portfolio, (B) investment portfolio, (C) other interest-earning assets, and (D) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average rate paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, (D) all interest-bearing liabilities ((A), (B), and (C)). Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period, for the items in items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets

should be determined on an interval no more frequent than monthly.

(v) For each of the periods required by item 14(b), set forth in tabular form: (A) The dollar amount of change in interest income and (B) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)) into amounts attributable to (1) changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by item 14(b), present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instructions. Applicants should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the latest fiscal year reported on, present separately the amounts of loans in each category required by balance sheet item 7(b), § 563c.102, which are due: (i) In each of the three years following the balance sheet, (ii) after three through five years, (iii) after five through ten years, (iv) after ten through fifteen years, and (v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

Instructions. 1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "roll-over policy," in which case the maturity should be revised as appropriate and the roll-over policy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restruc-

tured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

(e) *Savings activities.* (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, § 563c.102, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders equity at the end of the period.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other

items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, the general regulatory authority of the Office, and Federal regulatory capital requirements, the results of failure to meet those requirements, and the applicant's regulatory capital position in relation to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation, the Office, the Financing Corporation, and the Resolution Funding Corporation. In addition, describe briefly applicable liquidity requirements under section 4A of the Home Owners' Loan Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(g) *Federal Home Loan Bank System.* Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include

- (1) Limitations on borrowings;
- (2) Recent loan policies of the applicant's Federal Home Loan Bank and current interest rates; and
- (3) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(h) *State savings association law.* If the applicant is converting to a State-chartered stock association, describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and State taxation.* Describe briefly the Federal income tax laws applicable to the applicant including:

- (1) Permissible bad debt reserves;
- (2) The applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);
- (3) Future increases in the effective income tax rate;
- (4) The date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service; and
- (5) The tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion.

Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

Instruction. In answering item 7(j) give to the extent known the association's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(k) *Office and other material properties.* (1) Furnish the location of the applicant's home

office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed full time by the applicant including executive officers listed under item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to item 6.

(m) *Service corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Legal proceedings.* Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 103 of Regulation S-K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the applicant.

(o) *Additional information.* The Office may upon the request of applicant, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this item or the furnishing in substitution therefor of appropriate information of comparable character. The Office may also require the furnishing of other information in addition to, or in substitution for, the information required by this item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. Description of the Plan of Conversion

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this item: The Office of Thrift Supervision has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such approval by the Office does not constitute a

recommendation or endorsement of the plan by the Office.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual association to a stock association including the following information:

(1) State that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(2) State whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have;

(3) State the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders and supplemental eligible account holders in such account and the formula by which such account will be adjusted;

(4) State that the rights and obligations of borrowers from the applicant will not be changed in any manner;

(5) State that capital stock to be sold by the applicant will not be insured by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(6) State that none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and

(7) State briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the subscription rights of members, furnish the following information:

(1) The formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2), (4), and (5);

(2) Any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) The allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) The use and time of the order forms with respect to the exercise of subscription rights.

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion;

(2) State that the offering price will be the *pro forma* market value of such shares as determined by the association's management and the underwriter, as the case may be; and

(3) State that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss: (1) The earnings per share of the capital stock to be sold on a *pro forma* basis as of the most recent year-end and interim period required by item 14(b); and (2) the book value per share on a *pro forma* basis as of the most recent year-end and interim period required by item 14(a).

Instructions: 1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions used clearly stated.

2. In computing *pro forma* earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (item 7(d)(4)(i)(D)) and (ii) average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Office will consider permitting alternative computations proposed by an applicant that are properly supported.

4. An appropriate statement should be included which explains that the *pro forma* data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its conversion.

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state:

(1) That a maximum subscription price will be set forth in the offering circular used for offering of subscription rights;

(2) That the actual subscription price will be the public offering price;

(3) That the actual subscription price will not exceed the maximum subscription price shown on the order form; and

(4) That any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the

purchase of additional shares of capital stock.

(h) Furnish the following information:

(1) Describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future;

(2) Describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders receiving nontransferable subscription rights to purchase capital stock in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.6(c)(2) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting association. If such is the case, provide the information to the extent known required by item 6 of Form OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all officers, directors and their associates as a group without naming them.

(2) As to each officer and director named in item 5(a), name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(3) As to any officer, director or associate thereof who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(4) With respect to the information required by items (1), (2) and (3) of paragraph (j), indicate separately the number of shares proposed to be purchased in each offering category.

Instructions. With respect to the information requested as to associates of officers and directors, such information is required only to the extent known. In a case where such confirmation is not obtainable, only the number of shares which the associate is given subscription rights to purchase need be disclosed.

Item 9. Description of Capital Stock

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 202 of Regulation S-K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

(b) An undertaking should be included in the proxy statement that the applicant where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the applicant.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market makers and stockholders, and the anticipated success of the applicant in listing the stock.

Instructions. Any discussion of the listing of the applicant's stock should include the basic requirements that must be met for such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

Item 10. Capitalization

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant. Captions below may be modified as appropriate.

	(A) Capitalization as of most recent balance sheet date	(B) Pro forma adjustments as a result of conversion	(C) Pro forma capitalization, after giving effect to the conversion
Deposits			
FHL bank advances.			
Other			
Borrowings			
Capital stock			
Preferred stock			
Paid-in capital			
Retained earnings:			
Restricted			
Unrestricted			
Total.			

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized,

the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

3. With respect to Column A, the applicant should use the most recent balance sheet date required by item 14.

Item 11. Use of New Capital

State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New Charter, Bylaws, or Other Documents

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

Instruction. This item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

Item 13. Other Matters

State that the applicant will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. It should be noted that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

Item 14. Financial Statements

NOTES: 1. The following instructions specify the consolidated balance sheets, the con-

solidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement. Subpart A of part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently.

(a) *Consolidated balance sheets.* (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Office's approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) *Consolidated statements of income and cash flows.* (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished, except that for periods prior to July 15, 1988, statements of changes in financial position may be provided in lieu of statements of cash flows.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) *Financial statements of business acquired or to be acquired.* There shall be furnished the information required by 17 CFR 210.3-05 and 210.11-01 to -03 regarding business acquired or to be acquired.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.* There shall be furnished the information required by 17 CFR 210.3-09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

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(f) *Filing of other statements in certain cases.* The Office may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution thereof of appropriate statements of comparable character. The Office may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Item 15. Consents of Experts and Reports

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to § 563b.8(p).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction on item 12 shall apply to paragraph (a) of this item.

Item 16. Attachments

There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as approved by the Office unless the following procedure is observed. The association may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests within a specified period by means of a postage-paid postcard or other written communication.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22735, May 3, 1994]

§ 563b.102 Form OC—Offering Circulars.

FORM OC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

Offering Circular

(Exact name of applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Offering Circular Form

Item 1. Information Required by and Use of Form OC

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public offering through an underwriter or the direct community marketing by the converting savings association of the unsubscribed shares, unless otherwise indicated.

2. The offering circular shall include such information which the Chief Counsel or Deputy Chief Counsel for Securities and Corporate Structure, by interpretive release or otherwise, has deemed necessary to comply with this Form OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. Additional Current Information Required

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders,

voting members and others, the price at which the shares were sold, and the number of unsubscribed shares.

(e) The information required by items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the direct community offering or public offering pursuant to this paragraph (f).

Item 3. Statement Required in Offering Circulars

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE OFFICE OF THRIFT SUPERVISION NOR HAS SUCH OFFICE PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Item 4. Preliminary Offering Circular

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

"This offering circular has been filed with the Office of Thrift Supervision, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is declared effective by the Office of Thrift Supervision. The offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

Item 5. Information with Respect to Exercise of Subscription Rights

Any offering circular which is required to be delivered to subscribers shall describe all

material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights.

Item 6. Information with Respect to Public Offering or Direct Community Offering

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for any public offering, such information shall be given in substantially the tabular form set forth below. In any other case, the information may be given in narrative form. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share	\$	\$	\$
Total	\$	\$	\$

(b) An offering circular for a public offering or direct community marketing, where the plan of conversion does not contain the optional provision permitted by § 563b.3(d)(11), may omit the description relating to the exercise of subscription rights required by item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11). Each offering circular shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11).

(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.

(f) If any shares are to be sold by the converting savings association through a direct community marketing, indicate the timing of the offering, the geographical area where the offering will be made, the method to be employed to market the shares, including the frequency and nature of communications or contracts with potential purchasers, any preferences that will be given any such geographical area or class of potential purchasers, and the limitations on purchases by potential purchasers.

PART 563c—ACCOUNTING REQUIREMENTS

Subpart A—Form and Content of Financial Statements

Sec.

563c.1 Form and content of financial statements.

563c.2 Definitions.

563c.3 Qualification of public accountant.

563c.4 Condensed financial information [Parent only].

Subpart B [Reserved]

Subpart C—Financial Statement Presentation

563c.101 Application of this subpart.

563c.102 Financial statement presentation.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

SOURCE: 54 FR 49627, Nov. 30, 1989, unless otherwise noted.

Subpart A—Form and Content of Financial Statements

§ 563c.1 Form and content of financial statements.

(a) This subpart A states the requirements as to form and content of financial statements included by a savings association in the following documents. However, the Office's regulations governing the applicable documents specify the actual financial statements that are to be included in that document.

(1) Any proxy statement or offering circular required to be used in connection with a conversion under part 563b of this chapter.

(2) Any offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under part 563g of this chapter.

(3) Any filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, made pursuant to the requirements of part 563d of this chapter.

(b) Except as otherwise provided by the Office by rule, regulation, or order